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9 ALLIANCE WHOLESALERS, INC.
10 DBA PRODECO TECHNOLOGIES

11 **UNITED STATES DISTRICT COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

13 PEDEGO, LLC, a Delaware Limited
14 Liability Company,

15 Plaintiff,

16 vs.

17 ALLIANCE WHOLESALERS, INC.
18 DBA PRODECO TECHNOLOGIES,
19 a Florida Corporation,

20 Defendant.

21 CASE NO. SACV12-01106 CJC (JPRx)

22 **DEFENDANT'S EVIDENTIARY
23 OBJECTIONS TO AND REQUESTS
24 TO STRIKE PORTIONS OF
25 DECLARATION OF DON
26 DICOSTANZO**

27 Date: September 17, 2012
28 Courtroom: 9B
Time: 1:30 p.m.

29 Before Hon. Cormac J. Carney

30 Trial Date: None Set

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1 Defendant Alliance Wholesalers, Inc. dba Prodeco Technologies hereby
2 objects to and moves to strike portions of the Declaration of Don DiCostanzo dated
3 September 4, 2012.

4 The following format is used below:

5 (1) the Declaration is copied verbatim;

6 (2) where Defendant objects to all or a portion of a paragraph, the objected-to
7 portion is shown as stricken (e.g., ~~The person told me that ...~~) followed by a
8 highlighted “objection number” (e.g., [Obj. 2]); and

9 (3) the paragraph in the Declaration with the stricken language is followed by
10 a table (or box) containing (a) the “objection number” for the objected-to portion,
11 (b) the page and line reference in the Declaration for the objected-to portion, (c) the
12 ground(s) upon which Defendant objects and moves to strike the objected-to
13 portion, and (d) for the Court’s convenience, two boxes with headings
14 “Sustained/Stricken” and “Overruled” for marking by the Court.

15

16 DATED: September 10, 2012

KINSELLA WEITZMAN ISER
KUMP & ALDISERT LLP

19 By:


20 Jennifer J. McGrath
21 Attorneys for Defendant
22 ALLIANCE WHOLESALERS, INC. DBA
23 PRODECO TECHNOLOGIES

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DECLARATION OF DON DICOSTANZO DATED SEPTEMBER 4, 2012
WITH OBJECTIONABLE PORTIONS STRICKEN

DECLARATION OF DON DICOSTANZO

I, Don DiCostanzo, declare:

1. I am the President of plaintiff PEDEGO, LLC (“Pedego”) in the above captioned action. I have personal knowledge of the facts set forth herein except as to matters based on my position and the records of Pedego upon which I state are on information and belief. If called as a witness, I would competently testify to the same.

8 2. Interbike is an annual tradeshow for bicycles and the biking industry. It
9 is the largest bicycle tradeshow event in North America and has significant public
10 exposure. The next event, Interbike 2012, is set to take place in Las Vegas, Nevada
11 on September 19-21, 2012.

12 3. Pedego is an annual exhibitor at the Interbike tradeshow. Pedego
13 attended Interbike 2011 in September 2011. Interbike 2011 was the first time I saw
14 Alliance Wholesalers, Inc. DBA PRODECO TECHNOLOGIES (“Prodeco”) at the
15 tradeshow.

16 4. Prior to September 2011, I understood Predeco to be a new company
17 that had a limited public presence. [Obj. 1]

Objection No.	Reference	Grounds	Court's Ruling
1	¶ 4 at 2:7-8	(a) Lack of Foundation (Fed.R.Evid. 602); (b) Irrelevant (Fed.R.Evid. 401 and 402); (c) Lack of Personal Knowledge (Fed.R.Evid. 602).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

26 5. In about May 2011 I became aware of Prodeco's trademark application
27 at the U.S. Patent and Trademark Office for PRODECO TECHNOLOGY. In
28

1 response, I submitted a Letter of Protest to the USPTO, identifying Pedego's U.S.
2 Trademark Registration No. 3,770,790. A true and correct copy of the Letter of
3 Protest and the registration is attached hereto as Exhibit A and Exhibit B,
4 respectively.

5 6. On or about December 12, 2011, Prodeco allowed the PRODECO
6 trademark application to abandon. Attached hereto as Exhibit C is a true and correct
7 copy of the notice of abandonment. At that time I believed that Prodeco
8 Technologies intended to cease its attempt to register Prodeco and move to another
9 trademark. I am now informed that Prodeco in fact filed a Petition to Revive its
10 trademark application.

11 7. Pedego and Prodeco have overlapping dealers in the bicycle wholesale
12 market. For example, New Age Cycles in Hollywood, Florida and Pedal or Not,
13 Inc. in Santa Monica, California have carried both parties' products. Both
14 companies sell their products online and at tradeshows. [Obj. 2]

Objection No.	Reference	Grounds	Court's Ruling
2	¶ 7 at 2:23-24	(a) Lack of Personal Knowledge (Fed.R.Evid. 602); (b) Lack of Foundation (Fed.R.Evid. 602).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

22 8. Pedego and Prodeco sell similar electric bike products that are
23 marketed to emphasize identical features such as speed, weight and frame
24 configuration. [Obj. 3]
25

Objection No.	Reference	Grounds	Court's Ruling
3	¶ 8 in its entirety	(a) Lack of Foundation	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

(Fed.R.Evid. 602); (b) Speculation (Fed.R.Evid. 602); (c) Lack of Personal Knowledge (Fed.R.Evid. 602).

9. As the president of Pedego, I have regular contact with Pedego's customers and its dealers. Since December 2011, I have become aware of increasing consumer confusion between the PEDEGO and PRODECO trademarks.

[Obj. 4]

Objection No.	Reference	Grounds	Court's Ruling
4	¶ 9 at 3:1-2	(a) Lack of Foundation (Fed.R.Evid. 602); (b) Speculation (Fed.R.Evid. 602); (c) Lack of Personal Knowledge (Fed.R.Evid. 602).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

10. Attached hereto as Exhibit D are true and correct copies of phone logs evidencing phone calls to Pedego of people seeking information on Prodeco.

[Obj. 5]

Objection No.	Reference	Grounds	Court's Ruling
5	¶ 10 in its entirety	(a) Exhibit speaks for itself (Fed.R.Evid. 403 and 701); (b) Lack of Foundation (Fed.R.Evid. 602); (c)	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28

11. Attached hereto as Exhibit E are various emails evidencing confusion
 12 between PRODECO and PEDEGO. [Obj. 6]

Objection No.	Reference	Grounds	Court's Ruling
6	¶ 11 in its entirety	(a) Exhibit speaks for itself (Fed.R.Evid. 403 and 701); (b) Lack of Foundation (Fed.R.Evid. 602); (c) Speculation (Fed.R.Evid. 602); (d) Irrelevant (Fed.R.Evid. 401 and 402); (e) Lack of Personal Knowledge (Fed.R.Evid. 602); (f) Hearsay (Fed.R.Evid. 801); (g) Lacks Authentication (Fed.R.Evid. 901).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

12. Attached hereto as Exhibit F is a true and correct copy of an online
 2 article about electric bikes that confuses PRODECO and PEDEGO. [Obj. 7]

Objection No.	Reference	Grounds	Court's Ruling
7	¶ 12 in its entirety	(a) Exhibit speaks for itself (Fed.R.Evid. 403 and 701); (b) Lack of Foundation (Fed.R.Evid. 602); (c) Speculation (Fed.R.Evid. 602); (d) Irrelevant (Fed.R.Evid. 401 and 402); (e) Lack of Personal Knowledge (Fed.R.Evid. 602); (f) Hearsay (Fed.R.Evid. 801).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

13. Attached hereto as Exhibit G is a true and correct copy of a classified ad, where the seller has confused PRODECO and PEDEGO. [Obj. 8]

Objection No.	Reference	Grounds	Court's Ruling
8	¶ 13 in its entirety	(a) Exhibit speaks for itself (Fed.R.Evid. 403 and 701); (b) Lack of Foundation (Fed.R.Evid. 602); (c) Speculation (Fed.R.Evid. 602); (d) Irrelevant (Fed.R.Evid. 401 and 402); (e) Lack of Personal	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

1		Knowledge (Fed.R.Evid. 602); (f) Hearsay (Fed.R.Evid. 801); (g) Lacks Authentication (Fed.R.Evid. 901).	
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7 14. In or about July 2012, I first became aware that Prodeco would appear
 8 at Interbike 2012 as an exhibitor. I have now learned, in late August, that Prodeco
 9 also intends to act as a sponsor of the event as well. ~~I believe Prodeco's attendance
 10 and use of the PRODECO mark will cause a significant increase in actual confusion
 11 between the PRODECO and PEDEGO marks.~~ [Obj. 9]

Objection No.	Reference	Grounds	Court's Ruling
9	¶ 14 at 3:13-15	(a) Improper Legal Opinion (Fed.R.Evid. 701, 704, <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i> , 523 F.3d 1051, 1059 (9th Cir. 2008); (b) Lack of Foundation (Fed.R.Evid. 602); (c) Speculation (Fed.R.Evid. 602); (d) Irrelevant (Fed.R.Evid. 401 and 402); (e) Lack of Personal Knowledge (Fed.R.Evid. 602).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

1 I declare under penalty of perjury of the laws of the United States that the
2 foregoing is true and correct.

3
4 Dated: September 4, 2012

5 /S/
6 Don DiCostanzo
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